

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 19-1839V

(not to be published)

JEAN ROBEY,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: January 31, 2022

Special Processing Unit (SPU);  
Attorney's Fees and Costs

*Jason Robert Ohliger, Zimmerman & Ohliger, LLC, Milford, PA, for Petitioner.*

*Christine Mary Becer, U.S. Department of Justice, Washington, DC, for Respondent.*

### **DECISION ON ATTORNEYS' FEES AND COSTS<sup>1</sup>**

On December 4, 2019, Jean Robey filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the "Vaccine Act"). Petitioner alleges that she suffered a shoulder injury related to vaccine administration following an influenza vaccine administered on October 2, 2018. (Petition at 1). On September 9, 2021, a decision was issued awarding compensation to Petitioner based on the Respondent's proffer. (ECF No. 45).

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<sup>1</sup> Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Petitioner has now filed a motion for attorney's fees and costs, dated December 7, 2021 (ECF No. 49), requesting a total award of \$8,921.05 (representing \$8,047.30 in fees and \$873.75 in costs). In accordance with General Order No. 9, Petitioner filed a signed statement indicating that she incurred no out-of-pocket expenses. (ECF No. 49-6). Respondent reacted to the motion on December 13, 2021, indicating that he is satisfied that the statutory requirements for an award of attorney's fees and costs are met in this case, but deferring resolution of the amount to be awarded at the Court's discretion. (ECF No. 50). Petitioner did not file a reply thereafter.

In light of all the facts and circumstances of this case, particularly including the history of expedited resolution within the Special Processing Unit, and mindful of respondent's response to the instant application, I find that upon review of the submitted billing records and based on my experience in evaluating fee applications in similar Vaccine Act claims that the overall amount sought for attorneys' fees and costs is reasonable. Thus, especially in the absence of any particularized objection from respondent, further analysis is not warranted. Special Masters have "wide latitude in determining the reasonableness of both attorneys' fees and costs." *Hines v. HHS*, 22 Cl. Ct. 750, 753 (Fed. Cl. 1991). Moreover, Special Masters are entitled to rely on their own experience and understanding of the issues raised. *Wasson v. HHS*, 24 Cl. Ct. 482, 483 (Fed. Cl. 1991) *aff'd in relevant part*, 988 F.2d 131 (Fed.Cir.1993) (per curiam). *J.B. v. HHS*, No. 15-67V, 2016 WL 4046871 (Fed. Cl. Spec. Mstr. July 8, 2016) (addressing attorneys' fees and costs in the context of a history of attorneys' fees and costs awards in over 300 similarly situated SPU cases.)

The Vaccine Act permits an award of reasonable attorney's fees and costs. Section 15(e). Accordingly, I hereby GRANT Petitioner's Motion for attorney's fees and costs. I award a total of **\$8,921.05**<sup>3</sup> (representing \$8,047.30 in fees and \$873.75 in costs) as a lump sum in the form of a check jointly payable to Petitioner and Petitioner's counsel.

The clerk of the court shall enter judgment in accordance herewith.<sup>4</sup>

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<sup>3</sup> In finding the amount requested for attorneys' fee reasonable, this decision does not make any specific finding regarding the reasonableness of counsel's individual hourly rates, or whether an attorney practicing in Milford, Pennsylvania is entitled to receive forum rates for Vaccine Program work. Rather, based on the totality of the circumstances, the total amount billed for the hours spent in this compensated case is being deemed acceptable.

<sup>4</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**

Brian H. Corcoran  
Chief Special Master